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No. 04-493

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

RANDY, J. NETZER, Petitioner

Vs.

STATE OF WISCONSIN, Respondent.

On Petition For Rehearing
On Petition For Writ Of Certiorari
To The Wisconsin Court Of Appeals
For the IV District

PETITION FOR REHEARING

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PETITION FOR REHEARING

This Petition For Rehearing is a plea to the Court to closely take a second look at the original Petition For Writ Of Certiorari in this case and put in perspective this additional information. Specifically, the competency of petitioner Randy J. Netzer at the plea hearing and leading up to the plea hearing should be considered in determining whether the Alford Pleas in this case, made by Attorney John Brinckman and attributed to Netzer, were knowingly and voluntarily made.

Netzer always believed in his innocence and that the facts in this case, if looked at objectively by the trial court and the prosecutor, would result in the charges being dropped. So Netzer represented himself for 4 months from October 2000 -when he was first charged- until January 2001. During this time Netzer pleaded his case to the prosecutor in a pre-trial conference with the prosecutor not seeming to listen to anything Netzer had to say and Netzer filed 2 Motions To Dismiss which the trial court never responded to and never set for hearing and never heard. With the trial scheduled for February 2001 quickly approaching and the charges not being dropped, Netzer realized that he needed to retain an attorney because he did not know how to conduct a criminal trial or even how to do the necessary preparation for trial. In January 2001, after being turned down for legal assistance from the local not-for-profit legal services entity, Netzer wrote to the trial court to ask for time to hire an attorney but has never gotten a response from the court.

Feeling that the justice system was stacked against him as the court and prosecutor were not being responsive to him but the judge and the prosecutor had pre-existing relationships with the alleged victim as the alleged victim worked, in essence, for both the judge and the prosecutor as first a clerk in La Crosse County Clerk of Circuit Court's Office and then as a clerk in the La Crosse County District Attorney's Office, Netzer decided that without an attorney he would not be able to function at trial. So Netzer became very depressed and, without believing that he could get a fair trial, he began contemplating suicide. As stated in the original Petition For Writ Of Certiorari, Netzer then read Final Exit by Derek Humphreys, phoned Mr. Humphreys to get reassurance about the ease of committing suicide, and bought the helium and tubing needed to perform a "Final Exit type" suicide on himself.

After the suicide attempt failed Netzer's depression did not subside. Netzer did go to a psychologist, Mr. Jeffrey Court, to deal with his depression and he did talk to Mr. Court about his suicide attempt. When Netzer spent more than his life's savings--taking out a loan to hire an attorney--Netzer hoped that not having to deal with trial preparation and the case would alleviate his depression but it did not. This depression only deepened and Netzer became more withdrawn when Netzer found out only days before trial that his attorney, John Brinckman, (1) had not subpoenaed or prepared any witnesses and now some of those witnesses would be unavailable for the trial date, (2) had not gotten any of the exculpatory phone records that Netzer had asked Brinkman to get and now some of those records were destroyed, (3) had not conducted any additional discovery, and

(4) had conversations with the prosecutor about client-lawyer privilege matters - even though the subjects of those discussions would only reinforce Netzer's innocence - and about plea bargain negotiations initiated by Attorney Brinckman without Netzer's authorization.

At the final planned planned meeting between Netzer and Brinckman just days before trial Netzer found out all this information about how unprepared his attorney was and how his attorney had went behind his back to discuss the case and talk about plea deals. Netzer was totally unprepared for this. The result was that Netzer felt he was already dead and did not need suicide anymore. Even Netzer's attorney now was no longer listening to him and without the attorney being prepared for trial or having any witnesses or evidence ready Netzer became all the more withdrawn. From that point on Netzer was like a zombie and just wanted the trial date to pass and lacked competency to deal with everything.

CONCLUSION

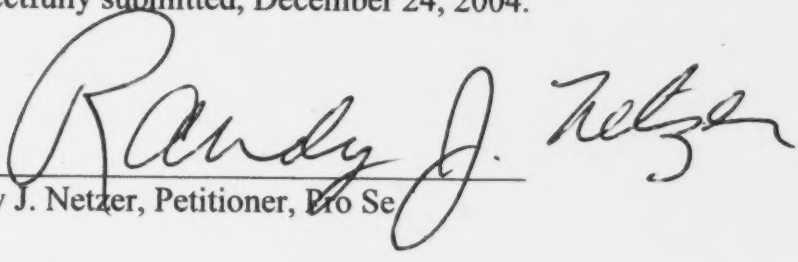
In the original Petition For Writ Of Certiorari issues justifying an order directing the trial court in this case to allow for a motion to withdraw plea were offered, including: (1) Denial of constitutional right to counsel due to the trial court issuing an ultimatum forcing the petitioner, Netzer, to either find/hire an attorney in just 1 business day or represent himself without any preparation in only 2 business days; (2) Inadequate assistance of counsel; and (3) Unauthorized entry of pleas by petitioner's attorney. The competency of the petitioner is intertwined with all of these issues because it is all of these circumstances, individually and cumulatively, that add to the petitioner's depression and ultimate lack of competency in the days immediately before the plea hearing and at the plea hearing.

If a "But For" test were to be applied to any of these issues, including competency, there is substantial basis of proof to justify allowing a motion to withdraw plea. It is the sworn statement of this petitioner as follows: (1) But for the trial court's ultimatum Netzer would have been able to choose an attorney of his choice to represent him and, if the court would have allowed counsel sufficient time to prepare for trial rather than fast-tracking the trial Netzer probably would have had Attorney John Matousek represent him but also would be able to choose from several other attorneys Netzer had contacted; (2) But for the inadequate representation of Attorney Brinckman, Netzer would have (a) had phone records that proved that he did not call the alleged victim after they broke up but that she repeatedly called him thereafter--once more than 7 times in a half hour span, (b) had witnesses prepared and available for trial, and (c) had no conversations with the prosecutor about plea bargains. No one would want or expect the inadequate representation offered in this case and if anyone thinks that they would be willing to accept this representation then they should ask themselves if they would retain an atorney who committed the acts and omissions of this attorney in this case; (3) But for the atorney voicing pleas in this case the petitioner, especially if competent at the time of the plea hearing, would not have made these pleas; (4) But for the incompetency of the petitioner at the time of the plea hearing the pressure from the petitioner's attorney would not have resulted in Alford pleas to stalking and harassment. Atorney Brinckman did not even explain the charges or the consequences of Alford pleas to Netzer so in his incompetent state at the time Netzer did not realize there was a difference between one misdemeanor that was "Class A" and another "Class B" or that and Alford plea would be essentially the same as a guilty or no contest plea.

CERTIFICATION

It is hereby certified that this Petition For Rehearing is restricted to the grounds not previously presented. Information regarding the original Petition For Writ Of Certiorari is only offered to lend perspective and completeness. This Petition For Rehearing is offered in good faith and not for delay.

Respectfully submitted, December 24, 2004.

X 

Randy J. Netzer, Petitioner, Pro Se

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